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A HANDBOOK FOR PARENTS

Child Support in South Dakota



IV-A Case: A child support case in which a custodial parent and child(ren) are receiving public assistance benefits under the state's IV-A program, which is funded under Title IV-A of the Social Security Act. (See also: TANF; Public Assistance)

IV-D Case: A child support case where at least one of the parties, either the custodial parent or the noncustodial parent, has requested or received IV-D services from a state's IV-D agency.

Jurisdiction: Legal authority a court or administrative agency has over particular persons and over certain types of cases, usually in a defined geographical area.

Monthly Support Obligation (MSO): The amount of money an obligor is required to pay per month.

Noncustodial Parent (NCP): The parent who does not have primary care, custody, or control of the child, and has an obligation to pay child support.

Non IV-D Orders: A child support order not being enforced by a state/local child support enforcement (IV-D) agency.

Obligee: Person, state agency or other institution to which child support is owed.

Obligor: The person who is obligated to pay child support.

Paternity: Legal determination of fatherhood. Must be established before child or medical support can be ordered.

Plaintiff: Person who brings an action; party complaining or suing in a civil case.

Commonly Used Child Support Terms

Arrearage: Past due, unpaid child support owed by the noncustodial parent.

Support: Financial support owed by a parent to help support a child or children of whom they do not have custody. Child support can be entered into voluntarily or ordered by a court or a properly empowered administrative agency, depending on each state's laws.

Contempt of Court: Not doing what the court has ordered you to do.

Custodial Parent (CP): Person or agency who has primary care, custody and control of a minor child(ren).

Default: Failure of a defendant to file an answer or appear in a civil case within the prescribed time after properly served with a summons and complaint.

Defendant: The person against whom a civil or criminal proceeding is begun.

Disbursement: The paying out of collected child support funds.

Good Cause: Valid reason(s) for not proceeding with: establishment of parentage or support; or enforcement and collection of child support.

Guidelines: A standard method for setting child support obligations based on the income of the parent(s) and other factors determined by State law.

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Welcome to the South Dakota Division of Child Support



Every child needs support, including financial and emotional support. Every child has a right to this support from both parents. Devoted parents can be a loving and supporting force in a child's life. Even when parents do not live together, they need to work together to support their children.

Without the involvement of both parents, too many children don't get the chance they need and deserve to reach their full potential. The South Dakota Division of Child Support (DCS) helps parents establish a financial partnership to support their children when they do not live together.

Division of Child Support Offices

Aberdeen: 420 S. Washington Street,
PO Box 1300, 57402-1300
Phone: 605-626-2375 **Fax:** 605-626-3199

Huron: 110 3rd St. SW, Suite 200, 57350
Phone: 605-353-8473 **Fax:** 605-353-7103

Mitchell: 116 East 11th Street, 57301
Phone: 605-995-8077 **Fax:** 605-996-0681

Pierre: 912 East Sioux Ave., 57501
Phone: 605-773-3637 **Fax:** 605-773-5390

Rapid City: 510 North Cambell,
PO Box 2440, 57709-2440
Phone: 605-394-2525 **Fax:** 605-394-2621

Sioux Falls: 811 East 10th Street,
Dept. 2, 57103-1650
Phone: 605-367-5464 **Fax:** 605-367-5515

Watertown: 2001 9th Ave. SW,
Suite 300, PO Box 670, 57201
Phone: 605-882-5186 **Fax:** 605-882-5045

Yankton: 3113 North Spruce Street,
Suite 200, 57078-5320
Phone: 605-668-3030 **Fax:** 605-668-3014

- The noncustodial parent is in a foreign country and DCS cannot obtain jurisdiction to proceed.
- DCS has documented that the custodial parent has not cooperated, and cooperation is essential for the next enforcement step.
- DCS has been unable to contact the custodial parent within 60 days.

Services will not be terminated if the custodial parent contacts DCS within 60 days of the Notice to Terminate and provides information which could lead to the establishment or enforcement of a support order.

For non-TANF recipients, services will be terminated at the request of the custodial parent or when the custodial parent applies for services in another state.

Child Support Services

Division of Child Support (DCS) services are available to any father or mother who is the custodial parent or adult who has custody of a minor child. Services are also available to fathers who need help establishing paternity.

What DCS Can Do

Depending on your circumstances and the information available, DCS may be able to help you:

- Locate noncustodial parents.
- Establish paternity.
- Establish and enforce court orders for child support and medical support.
- Review and modify court orders for child support.
- Enforce alimony if child support is also being collected.
- Work with other states to enforce support when a parent doesn't live in South Dakota.
- Collect and process payments.

What DCS Cannot Do

DCS does not provide:

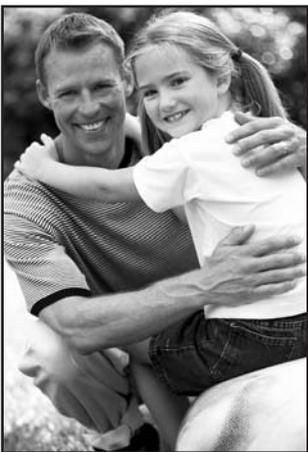
- Divorce assistance.
- Visitation and custody issues mediation/resolution.
- Spousal maintenance (alimony) order establishment.
- Legal advice or counsel.

Legal Services

In performing services, DCS may be assisted by a state's attorney or special assistant attorney general. These attorneys represent the State. They do not represent either parent, thus no attorney-client relationship exists. DCS attorneys cannot provide services regarding custody, visitation, or any other issues not related to child support such as property settlements, attorney fees, medical expenses, and other debts. If the custodial or noncustodial parent retains a private attorney for any services provided by DCS, the agency must be notified immediately.

Alimony Enforcement

Alimony or spousal support is collected along with the child support payments only when alimony is a part of the order for child support. DCS does not provide enforcement services for alimony payments only.



Termination of Child Support Services

DCS will provide a Notice of Termination for these reasons:

- No current support is due and arrearages are under \$500 or unenforceable under state law.
- The obligor is deceased and no further action can be taken or there is no available estate.
- Paternity cannot be established as the child is 18, genetic tests or the court has excluded the alleged father, DCS determines that further efforts are not in the best interest of the child, or the alleged father is unknown and cannot be identified.
- DCS has not been able to identify or locate the noncustodial parent over a period of three years, or one year when there is not sufficient information to initiate an automated locate effort.
- The obligor cannot pay support for the duration of the child's minority because the parent is institutionalized, with no chance of recovery, or incarcerated, with no chance of parole, or has a medically-verified total and permanent disability.

For TANF and former recipients, the state of South Dakota may be entitled to part of the support payment. Collections of arrearages which accrued prior to or during your TANF eligibility may be retained as payment for past assistance for which Social Services has not received full reimbursement.

Administrative Complaints

A recipient is entitled to an administrative review of a complaint where there is evidence that an error has occurred or an action should be taken on his or her case. To obtain a review, a recipient may contact the assigned DCS investigator with the complaint in an attempt to informally resolve the same.

A recipient may also submit a written complaint to DCS specifying the nature of the complaint and the action requested to be taken by DCS. Upon receipt of the written complaint, DCS shall conduct a review of the complaint and, if appropriate, take necessary corrective action. DCS shall advise the recipient either orally or in writing of any action taken to resolve the complaint.

A recipient is also entitled to request a fair hearing as allowed by law.

Applying for Child Support Services

If you are the custodial parent and receive public assistance through Temporary Assistance for Needy Families (TANF), Medicaid, or Title IV-E Foster Care, you qualify to receive DCS services without filing an application or paying an application fee.

If you are not receiving public assistance and are interested in applying for child support services or have questions, you can contact any DCS office. You will have to fill out an application and pay a \$5 fee. You can also find information about child support services online at: www.state.sd.us/social/dcs.

A \$20 fee is charged for “location only” services. The fee for locating a noncustodial parent in child custody or parental kidnapping cases is \$50 (\$54 if no Social Security number is provided). For “income withholding only” services, the fee is \$25.

Your Role in Your Case

You must take an active role in your case. Cooperating with DCS improves your chances of successful support establishment and collection. The office cannot succeed without your help. You must report changes that may affect your case.

You must contact DCS if:

- You or the other parent moves.
- You or the other parent gets a new phone number or job.
- The number of children living with you changes.
- You have new information that might help locate the other parent.
- You apply for public assistance.
- You are involved in other court actions regarding support payments.
- You hire an attorney.

Your Rights

If you apply for child support services, you have the right to:

- Receive fair and nondiscriminatory treatment.
- Have all private data treated as confidential.
- Be notified of all important actions concerning your case.
- Have the chance to participate in court action involving your case.
- Ask for reviews and adjustments to your support order.

DCS protects the confidentiality of information to the extent permitted by law. However, in providing support enforcement services on your case, it may be necessary to provide address and other information to other persons or agencies.

Receiving Public Assistance

People that make an application or receive TANF payments or Medical Assistance are automatically eligible for DCS services and must cooperate with DCS in locating the noncustodial parent, establishing paternity and a support order, or enforcement of the order. If you do not cooperate with DCS' action to establish paternity or child support, your public assistance benefits may be terminated. Applicants may have good cause for not cooperating with DCS; however, good cause must be approved by a TANF caseworker.

If you receive child support directly from the noncustodial parent, you must forward the payment to the Child Support Payment Center. If the State makes a mistake and gives you more money than you are supposed to have, you must repay the State for the overpayment.

End of Public Assistance

When your public assistance case closes, DCS services will continue unless you request otherwise. If you receive Child Care Services, you will be required to continue with DCS services. You will receive DCS collections ordered by the court which became due after your TANF case closed.

Obtaining Payment Information

The Child Support Payment Center has an automated voice response system that can be accessed toll-free from a touch-tone telephone 24 hours a day. The telephone number is **1-800-286-9145**. Parents must use the nine numeric digits of their case number and a personal identification number (PIN) to access this information. (DCS assigns PINs.)

Child Support and Visitation



Child support and visitation are separate matters. A custodial parent cannot withhold visitation if the noncustodial parent fails to pay support, and the noncustodial parent cannot

withhold support if the custodial parent won't allow visitation. The children should not suffer because of a conflict between their parents. If the parents can't agree on visitation rights, they should obtain mediator services or go back to court.

DCS will not represent either parent in matters of visitation or custody. If needed, parents are responsible for obtaining a mediator or legal counsel. The standard visitation guidelines are available in the SD Codified Law 25-4A Appendix or online at www.sdjudicial.com.

Locating the Noncustodial Parent

To obtain any type of order, DCS must notify the noncustodial parent that it is trying to establish an order. The office cannot take action in some cases if the noncustodial parent cannot be found.

If DCS does not know the whereabouts of the noncustodial parent, there are many ways to gather information. DCS investigators try to locate noncustodial parents through the State Parent Locator Service, which is linked with several state agencies such as Job Service, driver license, and motor vehicle registration. If the person has never lived in South Dakota or has left the state, DCS will request other states to search their files. DCS can also search on a national level through the Federal Parent Locator Service if the family has no knowledge of the other parent's whereabouts.

Information provided by the custodial parent can greatly increase the chances of locating the noncustodial parent. The Social Security number, information about work history, friends, relatives, arrest records, former addresses, or other pertinent information will speed the location process and increase the chance of collecting support.

In addition, DCS uses two other tools to locate parents.

- The Federal Case Registry contains limited information about each child support case in the United States. It matches quarterly wage information and unemployment compensation records submitted by each state with the National Directory of New Hires.
- Federal law requires all employers to report information about newly hired employees. They report the information to their state. The state then reports the information to the National Directory of New Hires for matching through the Federal Case Registry.

Establishing Paternity

Establishing paternity is determining who is the natural father. Child support cannot be ordered without establishing paternity. DCS helps parents establish paternity for a child who does not have a legal father. Establishing paternity is important for children because they can obtain:

- A part of any Social Security retirement or disability their father receives.
- Life insurance and inheritance their father might receive.
- Information regarding the father's family medical history that can benefit the child.

Direct Deposit

Custodial parents may choose to have their child support directly deposited into their bank account. Direct deposit provides an increased measure of security and accountability for those receiving payments, as well as the convenience of having funds delivered directly to your bank account. Direct deposit avoids delays that may occur with mail delivery and assures that payments will be deposited into your bank account even when you are away from home. If you do not elect to participate in direct deposit, the ReliaCard Visa will automatically be sent to you.

ReliaCard Visa

Custodial parents who do not enroll in direct deposit will automatically receive the ReliaCard Visa. The ReliaCard Visa is an electronic payment card; it is not a credit card. It is a prepaid debit card to which your child support payments are directly deposited.

You can use the card to get cash at automated teller machines (ATMs) and cash back at many retail stores. You can also use the card at grocery stores, gas stations, shopping malls, online purchases, bill paying, and mail or telephone orders.

The ReliaCard Visa gives you a monthly statement that makes it easy to track your account activity. After enrollment, you will receive customer service information from U.S. Bank.

Child Support Payments

The law requires parents to support their children until the child is 18 years old, or 19 years old if a full-time student in high school. State law requires all child support payments be made to a central location which is called the Child Support Payment Center. The address is:

**Child Support Payment Center
700 Governors Drive, Suite 84
Pierre, SD 57501**

All new and modified orders have this requirement. If the noncustodial parent fails to make payments through the Payment Center, they may not be given credit for support payments made directly to the custodial parent.

Payment Processing

The Child Support Payment Center generally processes all payments within two business days of receipt. Parents must allow two to three days for mail delivery. There can be delays in payments due to holidays, inclement weather, postal delivery service, and computer problems. DCS accepts electronic funds transfers from employers. DCS disburses child support payments electronically to custodial parents through direct deposit or ReliaCard Visa, a prepaid debit card.

Legal vs. Biological Father

Every child has a biological father – the man who contributed half of the child’s genetic makeup. But the legal father may not be the biological father. The legal father is who the law recognizes as a child’s father. In most instances, when a married couple has a child, the law automatically recognizes the husband as the child’s legal father; therefore, paternity doesn’t need to be determined. When an unmarried woman has a child, an official act is needed to establish the legal father of a child.

Paternity can be established in three ways. The mother and the alleged father can agree that he is the father of the child and sign the Paternity Affidavit Form. The mother and the alleged father can ask the court to officially declare that he is the child’s legal father.

If parents want proof the man is the biological father before he is named the legal father, they can request genetic testing. This can create a legal presumption of paternity if results show a 99% or greater probability that the man is the father. Once paternity is established, a child support order can be established.

DCS can file an action in circuit court or make a referral to another state to determine paternity and establish a support order before a child is 18 if paternity has not been established.

Establishing Child Support Orders

DCS or a parent may ask the court to issue a support order. The support order may be part of an interim, temporary, permanent, or modified court order in a divorce, paternity action, order for protection, child custody action, or separate child support action. The court generally orders the noncustodial parent to provide support. The court sets the amount of child support and medical support a parent must provide.

Steps to Establishing a Child Support Order

Once a noncustodial parent has been located and if the custodial parent does not have an order for support, DCS may serve the noncustodial parent a Notice of Support Debt advising the person of his or her duty to support the child(ren). The noncustodial parent must respond to the notice and provide a financial statement.

If the person does not contest the amount of support, orders can be obtained within 60 days after the noncustodial parent is served. If the noncustodial parent does not agree with the amount of support recommended by DCS, he or she may request a hearing. This may take three to six months.

Medical Expenses Not Covered by Insurance

The custodial parent may obtain a standardized form from the clerk of court, referee or DCS to request reimbursement of any medical or health care costs from the responsible parent. If the responsible parent does not reimburse the other parent, a small claims action may be initiated by the parent, guardian or other custodian to obtain a judgment against the responsible parent to collect unreimbursed medical or health care costs from the responsible parent. (SDCL 25-7-6.25)

Forms to initiate a small claims action may be obtained from the clerk of court. You must provide a written statement, signed and notarized, describing how the loss or damage occurred. This statement, along with supporting documents (receipts, cost estimates, etc) and the address of the parties, must be filed with the clerk of court. The fee for starting the action, and the postage and service cost required, may be added to the damages claimed against the defendant. DCS does not initiate the small claims action. For more information on initiating a small claims action, see the South Dakota Unified Judicial System's Web site at www.sdjudicial.com.

State child support agencies must cooperate and help each other in handling requests for assistance. In some cases, a backlog of child support cases in the responding state may slow interstate enforcement. The other state may assess or withhold fees from the support collected.

Medical Support Enforcement



The court order may specify one of the parents to maintain health insurance coverage. Generally, the noncustodial parent will be required to obtain health insurance, unless

the custodial parent has insurance available. DCS will only enforce health insurance if it is available through the noncustodial parent's employer. The custodial parent may prefer to obtain insurance if the noncustodial parent is self-employed or is in work where employers usually do not provide insurance.

Medicaid is not considered satisfactory health insurance.

Determining Child Support Without a Court Order

The SD Legislature established guidelines which courts must use to determine that an equitable share of parental income and resources are allocated to the child when that child's parents are separated, divorced,



or unmarried. The combined monthly net incomes of both parents shall be used in determining the obligation and divided proportionately between the parents based on their respective net incomes. The noncustodial parent's proportionate share establishes the amount of the child support order.

If using only the noncustodial parent's monthly net income is within the low income obligation areas of the guidelines, the amount shall be compared to the noncustodial parent's proportionate share using both parent's monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.

The court may also apportion the costs for childcare and health and dental insurance between the parents. These guidelines are presumed appropriate unless either parent presents evidence warranting a deviation.

Modifying a Child Support Order

Child support orders can be modified if either parent's income or circumstances change. Either parent (or their representative) may request a petition from the Department of Social Services for modification of child support orders entered in this state, as long as South Dakota retains continuing, exclusive jurisdiction over the parties. In certain circumstances, orders issued in other states may also be registered in South Dakota for modification purposes.

The completed petition is forwarded to the clerk of courts in the county where the order was entered. The court appoints a referee to hold a hearing. The referee will make a report to the judge with a recommendation for child support based on the state guidelines, before the judge signs a modified order of support.

Informal Agreements

DCS is required to enforce provisions of the order for child support. DCS will not honor informal agreements between the parents unless approved by court order. All informal agreements must be brought before the court for entry of a conforming order. When one parent is ordered to pay support and now has custody of the children, the parent must bring a formal action before the court.

● Other Income

If a noncustodial parent owes past due child support, DCS may withhold or intercept periodic or lump sum payments the noncustodial parent receives from state or local agencies, including: unemployment insurance, workers' compensation, and lottery winnings. DCS may also withhold assets held in financial institutions or retirement funds.

● Show Cause Hearings

DCS may refer cases to a prosecutor for show cause hearings when a noncustodial parent has not paid any child support for a period of time. The court may find a noncustodial parent in contempt of court if he or she has the ability to pay but is willfully not paying the child support obligation. This enforcement tool is used only when all others have failed.

When One Parent Lives in a Different State

The most difficult cases to enforce are those in which the noncustodial parent lives in one state and the child and custodial parent live in another. If South Dakota does not have jurisdiction over the noncustodial parent, DCS may request the other state to assist with establishing paternity and/or a support obligation as well as the enforcement of an order for support. DCS must rely on the responding state's laws, rules, regulations, policies, and procedures.

● **Passport Denial**

Passport applications may be denied if noncustodial parents owe at least \$5,000 in past due child support obligations.

The U.S. State Department reviews passport applicants to see if they owe past due child support. The noncustodial parent must pay the past due support in full before the restriction will be lifted.

● **Tax Refund Intercept**

DCS can collect past due child support from a noncustodial parent's federal income tax refund. If the noncustodial parent does not have a tax refund coming, DCS will not be able to intercept an amount. South Dakota does not have a state income tax.

The money collected cannot be applied to current support and must be applied to arrearages owed to the State first. If a collection from an income tax refund is payable to the custodial parent, DCS will hold the refund for six months if it involves a joint refund with the noncustodial parent's current spouse. This protects the State and the custodial parent should the spouse file an amended return stating the offset was due to the spouse's earnings. The custodial parent is personally liable for the return of any federal tax refund offset payments received erroneously, including any amounts which must be returned due to the filing of an amended return of the noncustodial parent or his or her spouse.

Enforcing a Support Order

When a parent does not meet the child support obligation, DCS works to enforce the support order. Below is a list of some enforcement methods.

● **Wage Withholding/ Income Withholding**



If arrears are due or immediate income withholding is included in the order for support, DCS may issue a wage withholding order to the obligor's employer to withhold current support payments

plus an additional amount to be applied to any past due support. A withholding order can also be used to collect child support if the obligor is receiving unemployment compensation. When served, the employer or payor of income is required to forward payments within 7 days from the date the employee is paid or their property is withheld.

A prorated amount may be withheld, depending on the pay periods. The employer or payor cannot withhold more than 50 percent of the gross income after mandatory deductions. The employer or payor of income may assess a fee for

withholding. The fee cannot exceed \$3 per month and may not reduce the amount of child support withheld. The fee is deducted from the obligor's remaining net income and is not used in determining the 50 percent withholding limitation.

DCS relies primarily on employment records and new hire reporting information from the Department of Labor to obtain the obligor's most current employer.

● **Auto Withdrawal of Income**

DCS may enter into alternative payment agreements with the obligor instead of issuing a wage withholding order to the employer. The obligor may enter into an authorization agreement which allows DCS to withdraw an amount equal to the current monthly child support obligation, plus an appropriate amount for arrears (if any exist) from his or her financial institution account.

● **New Hire Reporting**

Employers must report basic information about all newly hired employees to the SD Department of Labor. Employers must provide this information within 20 days from the day the employee starts work. Each state's child support agency receives data provided through new hire reporting. Staff use the information to locate noncustodial parents, establish or modify child support orders, and to enforce child support orders.

● **Credit Bureau Reporting**

If a noncustodial parent owes at least \$1,000 in past due child support, DCS reports the arrearage amount to credit bureau agencies. After the arrearages are paid, a zero balance will be reported to the credit bureau agencies. However, the zero balance will remain on the noncustodial parent's credit report for seven years.

● **Driver's, Professional, Hunting and Fishing License Restriction**

Driver's, professional, hunting and fishing licenses may be restricted for noncustodial parents who:

- Owe at least \$1,000 in child support arrearages, and
- Have not made any child support payments for three months, or
- Have at least three months of child support arrearages that have not been reduced to judgment.

The noncustodial parent is notified in writing when the restriction is placed on his or her license. In order for the restriction to be removed, the noncustodial parent has to either pay the past due balance in full or enter into a written payment plan with DCS. If the noncustodial parent does not comply with the payment plan, DCS may request revocation of the driver's license.

Public Assistance: Benefits granted from state or federal programs to aid eligible recipients. Applicants for some programs (TANF) are automatically referred to their state IV-D agency.

Putative Father: The person alleged to be the father of the child but who has not yet been determined to be the legal father.

Show Cause: Court order directing a person to appear and bring evidence as to why the remedies stated in the order should not be confirmed or executed. A show cause order is usually based on a motion and affidavit asking for relief.

Support Order: A judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of a competent jurisdiction, for the support and maintenance of a child.

Temporary Assistance to Needy Families (TANF): Time-limited public assistance payments made to families, based on Title IV-A of the Social Security Act. TANF replaced (AFDC) Aid to Families with Dependent Children .

Unreimbursed Public Assistance: Money paid in the form of public assistance (TANF or older AFDC expenditures) that has not yet been recovered from the non-custodial parent.